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09/656,320	09/06/2000	Douglas G. Delany		9073

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EXAMINER	
KARMIS, STEFANOS	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS G. DELANY,
BHAGYAM MOSES and BURZIN A. PATEL

Appeal 2008-0203
Application 09/656,320
Technology Center

Decided: April 21, 2008

Before TERRY J. OWENS, JOSEPH A. FISCHETTI, and
JOHN C. KERINS, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 1, 4-18 and 20, which are all of the pending claims.

THE INVENTION

The Appellants claim a billing method, system and article. Claim 1 is illustrative:

1. A computer implemented method for billing comprising:

assigning a weight score to a webserver function, wherein said score is a property of said function and said weight score is assigned to said function prior to use of said function by a user;
identifying said user;
determining if said function has been accessed by the user;
identifying a number of times the function is accessed in response to said determination;
calculating a fee based on an amount of time said user is logged;
calculating an amount of usage for each function by multiplying the number of times the function is accessed by the user with the weight assigned to the function;
summing said calculated amount for each accessed function;
multiplying said summation by a usage point; and
billing said user.

THE REFERENCES

Wright	US 2001/0027449 A1	Oct. 4, 2001[1]

Mary Ellen Bates, "Dialog's DialUnits: A Price Increase in Sheep's Clothing", *Searcher* 56-65 (Sep. 1998) (Dialog).

THE REJECTIONS

The claims stand rejected as follows: claim 1 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and

[1] Wright, filed January 22, 2001, is a non-provisional of provisional application no. 60/177,475, filed January 21, 2000. The Appellants do not dispute that Wright is prior art.

distinctly claim the subject matter the Appellants regard as the invention,[2] and claims 1, 4-18 and 20 under 35 U.S.C. § 103 over Wright in view of Dialog.

OPINION

We affirm the Examiner's rejections.

Rejection under 35 U.S.C. § 112, second paragraph

The Examiner argues that claim 1 is indefinite because it is unclear whether "billing said user" includes one, the other, or both of the fee calculated based upon the amount of time the user is logged, and the amount based upon weighted usage for each function (Ans. 3-4, 10-11).

The Appellants argue (Br. 7):

> While the bill limitation does [not] expressly say that the bill includes the two fees, any ordinary person in the art would understand that the purpose of calculating the two fees is so that they may be included in the bill. If the fee for user time was not to be included in the bill, there would be no reason for its calculation.

Just because claim 1 requires that two fees are calculated does not necessarily mean that either or both fees must be included in the billing. The language of claim 1 encompasses billing based on one, both, or neither of the fees. The Appellants' Specification states that "[t]hese amounts [based upon the weighted usage for each function] could be added to the respective user's bills" (Spec. 9:1). The "could be added" language indicates that including in the billing the amount based upon the weighted

[2] The rejection under 35 U.S.C. § 112, second paragraph, is withdrawn as to claims 6 and 11 in the Examiner's Answer (Ans. 6).

usage for each function is optional. Hence, the Appellants' argument is inconsistent with the Appellants' disclosure. That inconsistency illustrates the indefiniteness of claim 1.

Because claim 1 is unclear as to the basis for the billing, we affirm the rejection under 35 U.S.C. § 112, second paragraph.

Rejection under 35 U.S.C. § 103

Wright discloses a method for "near instantaneous presentation of usage, rate, and billing account information related to the consumption of Internet services by one or more users" (¶ 0002). The billing is based upon units of service used which include time, event, or functional units as predetermined by the service provider (¶ 0026). Wright tallies the measured units, assesses a rate per measured unit, and calculates a price for the consumed measured units by multiplying the tallied measured units by the assessed rate (claim 10).

Dialog discloses DialUnits, i.e., usages of system resources, for billing for searches on Dialog's databases (pp. 56-57). DialUnits cost anywhere from $0 for the traditionally free Chronolog and Dialog Publications files to $23 for some pharmaceutical databases (p. 57). Examples include $1 for a newspaper file, $4.75 for the Harvard Business Review file, and $5.36 for the Marquis Who's Who file (pp. 60, 63).

The Appellants rely upon the same argument with respect to all of the claims (Br. 8-22; Reply Br. 2-5). That argument is that neither Wright nor Dialog discloses or suggests multiplying usage units by a preassigned weight

when converting the usage units to total usage of resources (*see*, e.g., Br. 10; Reply Br. 3).[3]

Dialog's use of different prices per usage unit based upon the relative values of the usage units is tantamount to multiplying each usage unit by a weighting factor and then multiplying the result by a cost per usage unit. For example, charging $4.75 per usage unit for a search in the Harvard Business Review file is tantamount to multiplying the number of usage units by a weighting factor of 4.75 and then multiplying the result by a cost per usage unit of $1. One of ordinary skill in the art, through no more than ordinary creativity, would have used that approach in Wright's method to take into account the relative values of the events and functional units (¶ 0026). *See KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ").

Hence, we are not persuaded of reversible error in the rejection under 35 U.S.C. § 103.

[3] The Appellants also argue that there is no motivation to combine Wright and Dialog, but in that argument the Appellants address only Wright, not the combination of Wright and Dialog (Br. 15-16).

DECISION

The rejections of claim 1 under 35 U.S.C. § 112, second paragraph, and claims 1, 4-18 and 30 under 35 U.S.C. § 103 over Wright in view of Dialog are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

vsh

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